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January 6, 1981

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ARIZONA ATTORNEY GENERAL

INTERAGENCY

Mr. J. Michael Low
Director of Insurance
1601 West Jefferson
Phoenix, Arizona 85007

Re: 181-021(R80-112)

Dear Mr. Low:

You have asked whether the Arizona Property and Casualty Insurance Guaranty Fund, including the Guaranty Fund Board, is a budget unit and is therefore under the jurisdiction of the Department of Administration, Personnel Division and bound to comply with state bidding procedures. We conclude that the fund is a budget unit and, as such, the Board must comply with all statutes governing state budget units.

Pursuant to A.R.S. § 35-101.5, a "budget unit" is defined as "a department, commission, board, institution or other agency of the state organization receiving, expending, or disbursing state funds or incurring obligations against the state." The Fund is established pursuant to state law (A.R.S. § 20-662); it is a subdivision with the Department of Insurance (A.R.S. § 20-663) and is subject to the Director's powers (A.R.S. § 20-663.D); its plan of operation is subject to approval by the Director (A.R.S. § 20-665.A). We conclude, therefore, that it is an "agency of the state organization."^{1/}

1. We note that in declaring the predecessor to the Fund unconstitutional, our Supreme Court said, "The worthy objectives sought by the Legislature can be attained through normal governmental structure and without doing violation to the Constitution." Fireman's Fund Ins. Co. v. Ariz. Ins. Guaranty Fund, 22 Ariz.App. 453, 528 P.2d 839 (1974), vacated, 112 Ariz. 7, 536 P.2d 695 (1975). Subsequently, in response to the court, the Legislature enacted the current statutory scheme.

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As a state agency, its employees are subject to the state merit system established under A.R.S. § 41-762 et seq.^{2/}

Furthermore, the Fund receives monies which are assessed and collected pursuant to state law. (A.R.S. § 20-666). It also disburses funds in accordance with specific statutory guidelines. Therefore, we find that the Fund is "receiving" and "disbursing" "state funds," making it a "budget unit" within the scope of A.R.S. § 35-101.5.^{3/} As a budget unit, it is mandated to comply with all requirements pertaining to budget units, including applicable bidding requirements.^{4/}

Sincerely,



BOB CORBIN
Attorney General

BC:cp

2. See Ariz. Atty. Gen. Op. 179-147, which held that employees of the Fund Manager of the Public Safety Personnel Retirement System are subject to the merit system.

3. Although A.R.S. § 20-662.C provides that the Fund shall not incur obligations against the state, the Fund satisfies the alternative requirement. Moreover, the fund in question is a "public fund" serving a public purpose. A public fund need not be collected from the general public. Industrial Comm. v. School Dist. #48 of Maricopa County, 56 Ariz. 476, 108 P.2d 1004 (1941). The purpose of the fund is material to determining its characterization. Sims v. Moeur, 41 Ariz. 486, 19 P.2d 679 (1933). See Fireman's Fund Ins. Co. v. Ariz. Ins. Guaranty Fund, *supra*, n.1, for a discussion of the public purpose of this fund.

4. See Ariz. Atty. Gen. Op. 180-168, which discusses the Arizona Drug Control District as a budget unit. We note that when the Legislature established the Joint Underwriting Plan Fund and Board, it provided for an exemption from A.R.S. § 41-1051 et seq. in A.R.S. § 20-1709. No similar exemption exists for this fund.